

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

SHICOLBY DEVOL BELL,)

Petitioner,)

v.)

Case No: 2:14-cv-02188-VEH-JHE

KIM THOMAS and THE)
ATTORNEY GENERAL FOR THE)
STATE OF ALABAMA,)

Respondents.)

MEMORANDUM OPINION

On August 21, 2015, the magistrate judge entered a Report and Recommendation, (doc. 11), recommending that the petitioner's motions to amend, (docs. 9 & 10), be granted; his motion to produce the trial transcript, (doc. 8), be denied; and his petition for writ of habeas corpus be dismissed without prejudice. No objections have been filed. Instead, the petitioner has filed a motion to stay any ruling on his petition until he can get permission from the Eleventh Circuit to file a second or successive petition. (Doc. 12).

Section 2244 provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the

application.” 28 U.S.C. § 2244(b)(3)(A). Thus, a district court presented with a second or successive petition not authorized by the court of appeals must either dismiss the petition for want of subject-matter jurisdiction, or transfer the petition to the court of appeals for that court to consider. *See Guenther v. Holt*, 173 F.3d 1328 (11th Cir. 1999), *cert denied*, 528 U.S. 1085 (2000). While transfer appears to be the preferred option when dismissal of the application may implicate the timeliness of a subsequent application if the court of appeals grants the authorization, timeliness is not implicated here. Accordingly, the motion to stay (doc. 12) is **DENIED**.

The court has considered the entire file in this action, together with the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved. Accordingly, the court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of this court. The petition for writ of habeas corpus is due to be **DISMISSED WITHOUT PREJUDICE**. A separate Order will be entered.

DONE this 14th day of September, 2015.



VIRGINIA EMERSON HOPKINS
United States District Judge